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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,754	10/20/2000	Neil Berinstein	13115	7885

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EXAMINER

WEHBE, ANNE MARIE SABRINA

ART UNIT	PAPER NUMBER
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1632

DATE MAILED: 11/26/2002

18

Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1632

Response to Amendment

Applicant's amendment and response received on 5/7/02 has been entered. Applicant's substitute sequence listing and substitute CRF received on 9/18/02 have also been entered. Please note that the specification is now in compliance with 37 CFR 1.821-1.825. Claims 1-19 are pending in the current office action.

Applicant's amendment to claim 1 has substantially altered the subject matter of the pending claims as claims 2-19 depend on claim 1. The newly amended claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons. The original claim 1 was directed to a method of inducing an immune response in an animal to a tumor antigen comprising administering an effective amount of a tumor antigen **or** a nucleic acid sequence encoding a tumor antigen to a lymphatic site in the animal. Newly amended claim 1 is drawn to a method for inducing an immune response to a tumor antigen in an animal comprising a priming step wherein a tumor antigen is administered in a first form to a lymphatic site and a boosting step wherein the tumor antigen is administered in a second form into a lymphatic site of an animal, where the form of the tumor antigen administered in the priming and boosting steps are different. The newly amended claim includes a second boosting step which was not a claimed embodiment of the instant invention in the originally presented and examined claims.

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Had the originally presented claims included claims directed to the original subject matter which recited a single administration step of antigen in either protein or nucleic acid form and the newly claimed subject matter directed to the two step method, a restriction requirement under 35 U.S.C. 121 would have been made based on the fact that the two methods are patentably distinct. In particular, note that the forms of antigen in the two step method are not limited to a protein tumor antigen and a nucleic acid encoding a tumor antigen. Further, in view of the alternative language of the original claim 1, the second form of the tumor antigen is not required for use of the originally claimed method. In addition, the "boosting" step requires different conditions and results in different effect not required for the original method because the initial administration of antigen functions by priming a response and as such is governed by different parameters and conditions than the administration of antigen after an immune response has already been generated. Because the inventions have substantially different search considerations and are recognized as divergent subject matter by the skilled artisan, restriction for examination purposes is required.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-19 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142, 37 CFR 1.145, and MPEP § 821.03.

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Since no claims corresponding to the originally presented and examined subject matter are currently pending in the instant application, applicant's amendment is not considered responsive to the prior Office Action. See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (703) 306-9156. The examiner can be reached Mon-Thurs and every other Friday from 9:30-7:00. If the examiner is not available, the examiner's supervisor, Deborah Reynolds, can be reached at (703) 305-4051. General inquiries should be directed to the group receptionist whose phone number is (703) 308-0196. The technology center fax number is (703) 308-4242, the examiner's direct fax number is (703) 746-7024.

Dr. A.M.S. Wehbé

ANNE M. WEHBE' PH.D
PRIMARY EXAMINER

